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DEPARTMENT OF HUMAN SERVICES
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April 3, 2009

GENERAL LETTER NO. 16-G(1)-3

ISSUED BY: Bureau of Protective Services,
Division of Children and Family Services

SUBJECT: Employees' Manual, Title 16, Chapter G(1), **DEPENDENT ADULT ABUSE INTAKE**, Contents (page 1), revised; pages 1, 2, 21 through 24, and 25, revised; and pages 24a and 24b, new.

Summary

This chapter is revised to:

- ◆ Add a new section concerning caretakers serving as power of attorney for health care for dependent adults who may be violating the law. Unless the caretaker is related to the dependent adult within the third degree of consanguinity, by law the caretaker may not provide care and also serve as power of attorney for the dependent adult.
- ◆ Provide link to Employees' Manual, Title 16, Comm. 96, *Dependent Adult Protection Handbook* following the section on criteria to accept a report of alleged abuse.
- ◆ Change the policy on notifying reporters of abuse. The new policy is the intake worker will send form 470-3944, *Dependent Adult Abuse Notice of Intake Decision*, on every report of abuse within five working days, whether the report of abuse is accepted for evaluation or assessment or rejected.
- ◆ Add a new section on making referrals at the time of intake to Department service workers and licensing agents when ISIS indicates there is an open service on the dependent adult.

Effective Date

Upon receipt.

Material Superseded

Remove the following pages from Employees' Manual, Title 16, Chapter G(1), and destroy them:

<u>Page</u>	<u>Date</u>
Contents (p. 1)	July 18, 2008
1, 2, 21	July 18, 2008
22-24	April 11, 2008
25	July 18, 2008

Additional Information

Refer questions about this general letter to your area service administrator.

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Overview

Legal reference: 441 IAC 176.3(235B); Iowa Code sections 235B.1, 235B.3, 235B.5;
Iowa Code Chapter 235E

The primary purpose of intake is to obtain available and pertinent information regarding an allegation of dependent adult abuse. Your ability to gather this information is critical to the evaluation and assessment process and often the first step taken to initiate safeguards for dependent adults at risk. The intent of the law is to accept and process valid reports but not to infringe on an adult's constitutional right to privacy.

Be flexible and able to communicate effectively with callers by asking questions, recording necessary information, and discriminating between significant and extraneous information. A thorough intake will provide:

- ◆ Protection for a dependent adult.
- ◆ Necessary information for the assigned worker.
- ◆ Information and referral.
- ◆ Improved public awareness of the Department's roles, responsibilities, and limitations.

Protection for dependent adults in Iowa is provided by:

- ◆ Encouraging the reporting of suspected cases of abuse,
- ◆ The prompt and thorough evaluation or assessment of the reports,
- ◆ Intervening to provide protection to abused dependent adults, and
- ◆ Arranging for services for abused dependent adults.

Dependent adult abuse that occurs in the community is evaluated or assessed by the Department of Human Services (referred to in this manual as "the Department"). Dependent adult abuse that occurs in any of the following settings is evaluated by the Department of Inspections and Appeals:

- ◆ Health care facility as defined in Iowa Code section 135C.1
- ◆ Hospital as defined in Iowa Code section 135B.1
- ◆ Elder group home as defined in Iowa Code section 231B.1
- ◆ Assisted living program certified under Iowa Code section 231C.1
- ◆ Adult day program as defined in Iowa Code section 231D.1

Adults have constitutional rights guaranteeing certain freedoms. The Department strives to arrange services in the least restrictive manner possible. The goal is to balance a person's right to personal freedom while attempting to protect adults who are unable to protect themselves.

This manual is divided into the following sections:

- ◆ [Source of reports](#)
- ◆ [Intake process](#)
- ◆ [In-depth intakes](#)
- ◆ [Health care facilities](#)
- ◆ [Case assignment](#)

Legal Basis

Authority for the reporting and evaluation or assessment of dependent adult abuse and operation of the Central Abuse Registry is derived from the following sources:

- ◆ Public Law 97-35, the Omnibus Budget Reconciliation Act of 1981, provides funding for various social services, including protective services, through Social Services Block Grant funding.
- ◆ Iowa Code Chapter 217, "Department of Human Services," establishes the purpose and general duties of the Department of Human Services.
- ◆ Iowa Code Chapter 235B, "Adult Abuse," became effective January 1, 1983. It authorizes the Department to accept reports of suspected dependent adult abuse, evaluate and assess reports, complete an assessment of needed services, and make appropriate referrals for services.
- ◆ Iowa Code Chapter 235E, "Dependent Adult Abuse in Facilities and Programs," became effective July 1, 2008. It authorizes the Department of Inspections and Appeals to evaluate reports of suspected abuse of dependent adults residing or receiving services in:
 - Health care facilities defined in section 135C.1,
 - Hospitals defined in section 135B.1,
 - Elder group homes defined in section 231B.1,
 - Assisted living programs certified under 231C.3, and
 - Adult day service programs defined in section 231D.1.
- ◆ Iowa Code Chapter 234, "Child and Family Services," gives the Director of the Department the authority to use funds for protective services.
- ◆ 441 Iowa Administrative Code Chapter 176, "Dependent Adult Abuse," explains the program in greater detail.

- ◆ First-degree sexual abuse (Iowa Code section 709.2)
- ◆ Second-degree sexual abuse (Iowa Code section 709.3)
- ◆ Third-degree sexual abuse (Iowa Code section 709.4)
- ◆ Detention in a brothel (Iowa Code section 709.7)
- ◆ Indecent exposure (Iowa Code section 709.9)
- ◆ Assault with intent to commit sexual abuse (Iowa Code section 709.11)
- ◆ Sexual exploitation by a counselor or therapist (Iowa Code section 709.15)
- ◆ Invasion of privacy, nudity (Iowa Code section 709.15)
- ◆ Incest (Iowa Code section 726.2)

Sexual exploitation of a dependent adult by a caretaker means any consensual or nonconsensual sexual conduct with a dependent adult for the purpose of arousing or satisfying the sexual desires of the caretaker or dependent adult, which includes but is not limited to kissing; touching of the clothed or unclothed inner thigh, breast, groin, buttock, anus, pubes, or genitals; or a sex act, as defined in section 702.17.

Sexual exploitation does not include touching which is part of a necessary examination, treatment, or care by a caretaker acting within the scope of the practice or employment of the caretaker; the exchange of a brief touch or hug between the dependent adult and a caretaker for the purpose of reassurance, comfort, or casual friendship; or touching between spouses.

For more information on the criteria for accepting a report of dependent adult abuse, see *Dependent Adult Protection Handbook*, 16-G-Appendix, [Comm. 96, Intake](#).

Intake on Dependent Adults Who Have Died

If it is reported there is a suspicion a dependent adult has died as a result of actions the dependent adult did or did not take, do **not** accept the referral.

If it is reported there is a suspicion a dependent adult has died as a result of actions a caretaker did or did not take, accept the referral. If a caretaker is suspected of having financially exploited a dependent adult who has died, accept the referral.

Remind mandatory reporters to notify law enforcement. If the reporter is not a mandatory reporter, suggest the reporter contact law enforcement.

Making Reasonable Inferences

Reasonable inferences can be made when assessing whether or not a report is dependent adult abuse.

1. A reporter states he was driving down a street and saw an older woman being dragged out of her wheelchair onto the sidewalk. The woman was screaming. The reporter does not have to indicate specific injuries for you to reasonably infer the activity described is an allegation of assault or physical abuse.
2. A reporter states that a woman who is severely retarded and a resident of a skilled care facility has a sexually transmitted disease. You may reasonably infer the woman is the victim of sexual abuse.
3. A reporter states that a man who is paralyzed from the neck down and bed-bound is left alone for up to six hours a day. You may reasonably infer this man is at risk of harm and, therefore, the situation as described is an allegation of denial of critical care due to lack of adequate supervision.

Caretakers Prohibited From Having Power of Attorney for Health Care

Legal reference: Iowa Code section 144B.4(1) and (2)

When the person alleged responsible for abuse also has a power of attorney for health care (POAHC) for the dependent adult and is not related to the dependent adult by blood, marriage, or adoption within the third degree of consanguinity, the person is violating the law.

Iowa Code, Chapter 144B, "Durable Power of Attorney for Health Care," prohibits designation of the following as the attorney in fact to make health care decisions for a person under a durable power of attorney for health care:

- ◆ A health care provider who is attending the person on the date of the designation.
- ◆ An employee of a health care provider that is attending the person on the date of designation unless the employee is related to the person by blood, marriage, or adoption within the third degree of consanguinity.

Any health care provider or caretaker who also has the POAHC is violating this law unless the person is related to the dependent adult as described above. Determine if the person has POAHC for any other dependent adults. Because this is a violation of the law, notify the county attorney.

This policy **does not apply** to a power of attorney for financial matters. There is no legal prohibition against caretakers being named as power of attorney for financial matters, whether related or not.

What Is Not Dependent Adult Abuse

The following examples are **not** dependent adult abuse:

- ◆ A report under Iowa Code Chapter 236, "Domestic Abuse, " when the victim is not "dependent" as defined in this chapter. A domestic abuse report does not constitute a report of dependent adult abuse. The victim must be a dependent adult and the person responsible for the abuse must meet the definition of "caretaker" found in this chapter, and the abuse must be one of the allegations defined as dependent adult abuse.
- ◆ When a dependent adult declines medical treatment, if the dependent adult holds a belief or is an adherent of a religion whose tenets and practices call for reliance on spiritual means in place of reliance on medical treatment.
- ◆ When the dependent adult's caretaker, acting in accordance with the dependent adult's stated or implied consent, declines medical treatment, if the dependent adult holds a belief or is an adherent of a religion whose tenets and practices call for reliance on spiritual means in place of reliance on medical treatment. (Iowa Code 235B.2, paragraph 5.b.)
- ◆ Withholding and withdrawing of health care from a dependent adult who is terminally ill in the opinion of a licensed physician, when the withholding and withdrawing of health care is done at the request of the dependent adult or at the request of the dependent adult's next of kin or guardian, pursuant to the applicable procedures in Iowa Code Chapters 125, 144A, 222, 229, or 633.
- ◆ Any report concerning a person legally incarcerated in a penal setting, either in a local jail or in the custody of the Department of Corrections.

In-Depth Intakes

Legal reference: 441 IAC 176.3

An in-depth intake involves contacting mandatory reporters who may have knowledge of the dependent adult's circumstances and information regarding the abuse allegation, or contacting the reporter again (either mandatory or permissive) in a specific case to obtain additional information.

An in-depth intake may be appropriate when any of the following occur:

- ◆ The allegations of the referral are unclear or contradictory.
- ◆ The motive of the reporter appears to be one of harassment or vengeance.
- ◆ The allegations of the referral are not sufficient for a case to be assigned for evaluation or assessment, because one or more of the criteria necessary to initiate an evaluation or assessment are missing (dependent adult, caretaker, or abuse allegation.)

When it is necessary to conduct an in-depth intake, contact the mandatory reporter or collateral sources as soon as possible, so the assigned worker can meet the 1-hour and 24-hour timeframes.

Only persons who qualify as mandatory reporters or the person making the report may be contacted as collateral sources during the intake process to expand or to clarify information in the report. Do **not contact** subjects of the report or persons who are **not** mandatory reporters, because that would move the intake into the evaluation or assessment process.

Rejected Intakes/Information and Referral

Legal reference: Iowa Code section 235B.3

View every intake call as a means to educate reporters regarding the dependent adult abuse program. You must obtain enough information to be able to determine abuse has not occurred before a report can be rejected.

When the information being reported does not meet the criteria for an evaluation or assessment, advise the reporter of the missing criteria. Assure the reporter a supervisor will make the final determination whether a report will be accepted or rejected. Document what you have told the reporter on the intake sheet.

The conversation may serve as notification to the reporter that the report has been rejected. The reporter can identify any missing requirement and attempt to obtain the information or can better understand what is required for protective services to accept a report.

Encourage informants to make their own referral to resources that are more appropriate when the information does not fall within the definitions of dependent adult abuse. If appropriate, refer the reporter to the following agency or person:

- ◆ Licensing or regulatory body
- ◆ Law enforcement
- ◆ DHS caseworker
- ◆ Other community service agencies
- ◆ Central point of coordination administrator
- ◆ Domestic abuse agency
- ◆ County attorney of legal aid

If a referral of abuse in an out-of-home care setting appears to be a licensing or certification issue or a problem with policy or procedure, refer the reporter to the licensing person or the administrator of the facility, agency, or program. For charts identifying regulatory authorities, see [Comm. 195, Facility, Agency, and Program Evaluation Handbook](#), in 16-G-Appendix.

When the referral does not meet the criteria for an evaluation but alleges illegal activity, notify law enforcement and document that on the intake form.

When a report does not meet the criteria to be evaluated or assessed, but a dependent adult's safety appears to be in jeopardy, advise the reporter the dependent adult may be eligible for services provided by the Department or in the community. If the dependent adult has a mental health or mental retardation diagnosis, refer the reporter to the central point of coordination administrator in the county the dependent adult resides.

If the referral of abuse does not meet the criteria for an evaluation, but it occurred between family members or persons residing in the same household, refer the reporter to the local domestic abuse agency.

If the referral of abuse does not meet the criteria for an evaluation or assessment but concerns legal issues, refer the reporter to the county attorney's office or Legal Aid.

Document any referrals to community resources or to the Department service unit on the intake form or attachment.

A supervisor must review the report and make the final determination about rejecting or assigning it for an evaluation or assessment. If the report is rejected, write the date, time, reason for rejection and name of supervisor approving the rejection on the intake form, or attach this information to the intake form.

After the rejection decision has been made, the supervisor or designee will make reasonable efforts to notify the reporter of the rejection decision and the reasons for the rejection, unless this was done during the initial intake contact with the intake worker.

Send copies of rejected reports to the county attorney. Maintain rejected reports in the local protective service unit for six months, and then destroy them. If a subject of a report requests information about a rejected intake involving the subject, provide a copy of the rejected intake to the subject, if available. Delete the identity of the reporter on the rejected intake.

Notice of Intake Decision

Legal reference: 441Iowa Administrative Code 176.5(5)

Tell the reporter of an allegation of abuse whether or not the report of abuse will be accepted or rejected for evaluation or assessment at the time of the initial report if you are reasonably certain the report will be rejected or accepted.

Send form 470-3944, *Dependent Adult Abuse Notice of Intake Decision*, to every person who has reported an allegation of dependent adult abuse, within five working days from the date the report was made. (See [16-G-Appendix](#) or Outlook, State Approved Forms, Dependent Adult Abuse.)

Notifying DHS Service and Licensing Workers of Abuse Report

Legal reference: Iowa Code sections 235B.6(2)(c)(3), 235B.6(2)(e)(2), and 235B.6(3)

When you accept a report of abuse for an evaluation or assessment, and you know from looking the dependent adult up in ISIS that there is an open Department service case on the person, send an e-mail notifying the Department service worker that a report of abuse has been accepted for evaluation or assessment by the protective services unit.

Department service workers include: targeted case managers, case managers, waiver service managers, adult service workers and any other Department service worker currently monitoring services for an alleged dependent adult.

If ISIS indicates there is an open waiver case with another agency service worker, send the e-mail notification to: hcbsir@dhs.state.ia.us. The waiver program managers who oversee the waiver programs can notify the agency that there has been a report of abuse and it might involve a regulatory issue. For additional information, see [*Comm. 195, Facility, Agency and Program Evaluation Handbook*](#).

When you notify a service worker by e-mail that a report of abuse has been accepted for evaluation or assessment by protective services, add that information to the intake form. The assigned worker may want to coordinate interviewing the dependent adult with the service worker or licensing manager.

Facilities and Programs Where DIA Evaluates Allegations

Legal reference: Iowa Code chapter 235E

The Iowa Department of Inspections and Appeals (DIA) is responsible for the evaluation and disposition of dependent adult abuse reports within the following facilities when facility or program staff or employees are alleged persons responsible for the abuse:

- ◆ Health care facilities licensed under Iowa Code Chapter 135C, which include:
 - Residential care facilities (RCFs)
 - Nursing facilities
 - Intermediate care facilities for the mentally retarded (ICFs/MR)
 - Intermediate care facilities for the mentally ill (ICFs/MI)
- ◆ Hospitals (as defined in Iowa Code 135B)
- ◆ Elder group homes (as defined in Iowa Code Chapter 231B)
- ◆ Assisted living programs (certified under Iowa Code Chapter 231C)
- ◆ Adult day services programs (as defined in Iowa Code Chapter 231D)